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No. 86-9

In the Supreme Court of the United States

OCTOBER TERM, 1986

WILLIAM JOSEPH QUINN, PETITIONER

v.

GLEN E. ROBINSON, UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF CALIFORNIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals applied the correct standard of review in concluding that the "political uprising" in Northern Ireland did not extend to England.

2. Whether crimes of violence against civilians that occur in England are extraditable when they are allegedly committed by persons seeking to change the form of government in Northern Ireland.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 61-164) is reported at 783 F.2d 776. The opinions of the district court (Pet. App. 16-60) and the magistrate who conducted the extradition hearing (Pet. App. 165-262) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 18, 1986. A petition for rehearing was

denied on April 22, 1986. The petition for a writ of certiorari was filed on July 2, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case involves a request by the United Kingdom for the extradition of petitioner, who is charged with a number of offenses allegedly committed in England. After holding a hearing, the magistrate found petitioner extraditable (Pet. App. 165-262). On a writ of habeas corpus, the district court overturned the magistrate's decision and found that petitioner was not extraditable because his offenses fell within the "political offense" exception in the 1977 extradition treaty between the United States and the United Kingdom (*id.* at 16-60). The court of appeals reversed in part and remanded in part (*id.* at 61-164). It found petitioner extraditable on one charge against him, and it remanded a second charge to the district court for further proceedings.

1. In October 1981, the government of the United Kingdom charged petitioner, a United States citizen, with a series of offenses allegedly committed in England. The charges included murdering a police constable, conspiring to cause explosions in the United Kingdom, and six substantive counts involving explosive devices. Pet. App. 16-17, 65. At the time the charges were brought, petitioner was residing in this country.

Petitioner was arrested on September 30, 1981, on a provisional warrant issued on an application by the United States on behalf of the United Kingdom (Pet. App. 17). On November 4, 1981, the United Kingdom made a formal diplomatic request for petitioner's extradition under the 1977 extradition treaty

between the United States and the United Kingdom (28 U.S.T. 229, T.I.A.S. No. 8468).

2. The magistrate conducted an extradition hearing under 18 U.S.C. 3184 on the United Kingdom's request to extradite petitioner on the murder and conspiracy charges (Pet. App. 1-2).[1] The evidence introduced at the extradition hearing showed that petitioner engaged in a conspiracy to cause explosions between January 1, 1974, and April 3, 1975.[2] Petitioner's co-conspirators are known as the "Balcombe Street Four" after the location of the flat where they were arrested in December 1975, following a six-day siege. *Id.* at 69. The conspiracy evidence focused on a series of bombing incidents in 1974 and 1975, three of which involved letter bombs and three of which involved bombs planted in public places. Two of the letter bombs caused injury to civilians. Petitioner's fingerprints were found on the wrapping around each of the three bombs. *Id.* at 66-67. Petitioner's fingerprints were also found on one of the bombs that was planted in a public place, and the fingerprints of several of petitioner's co-conspirators were found on one of the other bombs (*id.* at 67). Each of those bombs was defused without causing injury.

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[1] Prior to the hearing, the United Kingdom withdrew its extradition request on the six substantive counts involving explosives (Pet. App. 17).

[2] On April 4, 1975, petitioner was arrested in Ireland in connection with separate 1974 kidnapping and assault charges. He was subsequently convicted in Ireland of membership in an outlawed organization, the Provisional Irish Republican Army. He was imprisoned on that charge until January 2, 1976, when he was released. Pet. App. 66.

The murder with which petitioner is charged occurred on February 26, 1975. On that date, a police constable stopped petitioner on a London street because of petitioner's suspicious behavior. When petitioner ran from the first officer, two other officers began pursuing him. One of the officers, Police Constable Stephen Tibble, placed himself in petitioner's path and prepared to stop him. Petitioner then drew a pistol, shot Constable Tibble three times, and continued running. Tibble died that afternoon. Pet. App. 68, 175.

Subsequent police searches of several London flats and houses, including the Balcombe Street flat, revealed explosives, detonators, fuses, and diagrams of bomb construction (Pet. App. 67-68, 177, 193-198). The items found in the flats connected those bomb factories with each other and with the various bombings. Petitioner's fingerprints were found on items in all of the residences, and the automatic pistol that was used to kill the constable was found in the Balcombe Street flat. *Id.* at 69, 179-180, 194.

Following the evidentiary hearing, the magistrate certified to the Secretary of State that petitioner was extraditable on the charges of murder and conspiracy to cause explosions (Pet. App. 17, 262). The magistrate concluded that there was probable cause to believe that petitioner had murdered Constable Tibble (*id.* at 212-217) and that petitioner was a member of and participant in the bombing conspiracy.[3] The

[3] The magistrate concluded that petitioner's extradition on the conspiracy charge was not barred by the statute of limitations, because the running of the statute of limitations was tolled by petitioner's flight (Pet. App. 217-230). The statute of limitations did not affect the murder charge, because neither the United Kingdom nor the United States recognizes a statute of limitations for murder (*id.* at 217).

magistrate rejected petitioner's claim that extradition should be barred on the ground that his offenses were exempted by the provision of the 1977 treaty dealing with political offenses (*id.* at 230-262). At the time of the offenses, the magistrate found, there existed in Northern Ireland a violent political uprising of sufficient magnitude to implicate the political offense exception (*id.* at 236-248). The magistrate found, however, that petitioner had failed to prove either that he was a member of the uprising group (*id.* at 248-251) or that his offenses were incidental to and in furtherance of that political uprising (*id.* at 251-262). Accordingly, the magistrate found that the political offense exception was not applicable to petitioner's crimes.

2. Petitioner sought review of the magistrate's certification in the district court by way of habeas corpus, and the district court granted the writ. The district court held that petitioner could not be extradited on either the murder or the conspiracy charge because those crimes constituted political offenses within the meaning of the 1977 treaty. The district court ruled that it was unnecessary for petitioner to show, as the magistrate had required, that he was a member of the uprising group in order to invoke the exception. Pet. App. 30-36. The district court also concluded that the murder and the bombing conspiracy were incidental to and in furtherance of the uprising (*id.* at 36-60).

3. The court of appeals reversed in part and remanded in part, with each member of the panel writing separately. Judge Reinhardt concluded that the charges under which the United Kingdom requested extradition do not fall within the political offense ex-

ception in the 1977 treaty[4] (Pet. App. 84-127). In his view, the political offense doctrine would be triggered if an uprising existed and if the offense with which the defendant was charged were incidental to the uprising. (*id.* at 107-118). In this case, Judge Reinhardt observed, the magistrate was correct in finding that an uprising existed in Northern Ireland, but Judge Reinhardt concluded that the uprising did not extend to England, because the level of violence there was insufficient in itself to constitute an "uprising" (*id.* at 124-125). Moreover, he found that there was no uprising in England because "what violence there was was not being generated by citizens of England" (*id.* at 125). In the absence of such an uprising in the place where the crimes were committed, Judge Reinhardt concluded that neither the Tibble murder nor the bombing conspiracy fell within the political offense exception to the 1977 treaty (*id.* at 127). With respect to the statute of limitations on the bombing conspiracy, Judge Reinhardt concluded that that part of the case had to be remanded to the district court for further development of two issues: (1) whether that charge was initiated against petitioner within the five-year limitations period for conspiracy that is recognized under American law; and (2) whether petitioner's alleged fugitive status tolled the statute of limitations for all or some of the period between the 1975 offense and the 1981 extradition request. *Id.* at 131-133.

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[4] Like the magistrate and the district court, all members of the court of appeals panel rejected the government's argument that the question whether an offense falls within the political offense exception is a matter committed to the exclusive jurisdiction of the Executive Branch. Pet. App. 26-28, 73-80, 135 n.*, 149, 231-232.

Judge Duniway concurred in the judgment that petitioner's offenses do not fall within the treaty's political offense exception, but he did not concur in Judge Reinhardt's analysis (Pet. App. 149). In particular, Judge Duniway rejected Judge Reinhardt's geographical limitation on the existence of an uprising; he preferred instead the rationale of the decision in *Abu Eain* v. *Wilkes*, 641 F.2d 504, 521 (7th Cir.), cert. denied, 454 U.S. 894 (1981), where the Seventh Circuit held that the political offense doctrine does not apply to "the indiscriminate bombing of the civilian population" (Pet. App. 150). In addition, Judge Duniway concluded that neither the Tibble murder nor the bombing conspiracy was incidental to any uprising. He pointed out that none of the individuals to whom the letter bombs were sent had any direct connection to the troubles in Northern Ireland, and he concluded that the fact that Tibble was a police officer did not convert his murder into a political offense, since petitioner killed the officer simply in an effort to avoid arrest. *Id.* at 151. Judge Duniway concurred in the portion of Judge Reinhardt's opinion remanding the bombing conspiracy charge to the district court for further findings (*ibid.*).

Judge Fletcher dissented. She disagreed with Judge Reinhardt's conclusion that the uprising in Northern Ireland did not extend to England (Pet. App. 152-153). She also concluded that petitioner's offenses were incidental to that uprising (*id.* at 153-154). However, she took the position that the political offense exception does not apply to foreign mercenaries. Because the record did not show the extent of petitioner's ties to Northern Ireland, Judge Fletcher would have remanded the case to the district court for factual findings about whether petitioner, an

American citizen, "should be treated as an Irish national and afforded the protection of the political offense exception" (*id.* at 156).

Although none of the three judges agreed on the analysis that should be employed in this case, the court's judgment was that petitioner was extraditable on the murder charge, while the bombing conspiracy charge had to be remanded to the district court for further proceedings.

ARGUMENT

1. Apart from the merits of the claims in the petition, there are two important reasons that this case does not warrant review by this Court.

a. First, the status of the "political offense" exception in the 1977 extradition treaty has recently undergone wholesale revision as a result of the ratification of a new extradition treaty between the United States and the United Kingdom. On June 25, 1985, the two countries signed a supplementary extradition treaty, S. Exec. Rep. 99-17, 99th Cong., 2d Sess. 2 (1986). On July 17, 1986, the Senate consented to ratification of the supplementary treaty, which will enter into force after the treaty partners exchange instruments of ratification. Supplementary Treaty, Art. 7, S. Exec. Rep. 99-17, at 17.

The supplementary treaty was negotiated after three federal district courts had denied requests by the United Kingdom for the extradition of members of the Provisional Irish Republican Army accused or convicted of acts of violence. Each of those requests was denied on the ground that the offenses were political and therefore not extraditable under Article V(1)(c) of the 1977 treaty. S. Exec. Rep. 99-17, at 2; see Pet. App. 6. The new treaty is, accord-

ingly, designed to exclude terrorist acts from the category of "political offenses." To that end, the new treaty has removed from the reach of the "political offense" exception certain offenses, such as murder, voluntary manslaughter, kidnapping, and hostage-taking, as well as offenses involving the use of bombs or incendiary devices in a manner that endangers any person. Supplementary Treaty, Art. 1, S. Exec. Rep. 99-17, at 15.[5]

These changes in the scope of the "political offense" exception will dramatically alter the manner in which extradition cases such as this one will be handled in the future. In any future bombing or murder cases such as this one arising under the extradition treaties between the United States and the United Kingdom, there will be no need for the courts to explore the scope of the "political offense" exception, since that exception has been declared inapplicable to such offenses. Thus, the questions that petitioner asks this Court to review are not likely to arise in any future cases involving extradition requests by the United Kingdom resulting from politically motivated crimes of violence.

b. The second general reason that this is an inappropriate case for review by this Court is that no two members of the panel were able to agree on the

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[5] While eliminating the "political offense" exception for certain crimes, the supplementary treaty provides that extradition shall not occur if the subject of the extradition request establishes that the request for extradition "has been made with a view to try or punish him on account of his race, religion, nationality, or political opinions, or that he would, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, or political opinions." Supplementary Treaty, Art. 3, S. Exec. Rep. 99-17, at 16.

proper interpretation of the "political offense" exception in the 1977 treaty. The panel's three-way split therefore did not make law that is binding even in the Ninth Circuit. Judge Reinhardt's analysis would make the political offense exception inapplicable to crimes committed in locations other than the one in which the "uprising" is taking place. Judge Duniway's analysis would make the political offense exception inapplicable to the bombing of members of the civilian population. Judge Fletcher would find the political offense doctrine applicable to offenses occurring outside Northern Ireland, but she would not extend the doctrine to persons without "tangible and substantial connections with the country in which an uprising occurs." Pet. App. 155. Because the panel was unable to agree on a single rationale for the decision in this case, there is no conflict between the analysis in this case and the analysis of the political offense doctrine by any other court of appeals, or even any district court.

2. a. With regard to the particular issues petitioner raises in this Court, he first claims (Pet. 8-12) that the court of appeals improperly applied a de novo standard of review to the question whether an uprising existed in England. Petitioner claims that on that question the court of appeals should have deferred to the factual findings of the magistrate and the district court.

The first answer to this contention is that it was not the court of appeals that committed this asserted error; the error, if any, was committed only by Judge Reinhardt. Because neither Judge Duniway nor Judge Fletcher found the geographical issue relevant to their analysis, they did not find it necessary to

decide whether there was an "uprising" in England for purposes of the political offense exception.

Moreover, petitioner has erred in his characterization of Judge Reinhardt's opinion. Judge Reinhardt did not override any finding of fact by the magistrate; instead, he expressly deferred to the magistrate on questions of fact (Pet. App. 81-82). Judge Reinhardt then noted that the magistrate had found (1) that there was a violent political uprising in Northern Ireland at the time of petitioner's offenses; and (2) that if his inquiry were limited to London, he would find that the severity of the political disturbance there was insufficiently grave to bring into play the political offense exception (*id.* at 119). Judge Reinhardt agreed with both of those factual findings by the magistrate. Where he parted company with the magistrate was on the magistrate's "legal determination" that because Northern Ireland and London are both part of the United Kingdom, and because offenses in both areas were directed at the same sovereign, the political uprising in Northern Ireland had to be regarded as extending to London. *Ibid.* Judge Reinhardt therefore did not disregard the general principle that the magistrate's findings of fact should be given substantial deference in extradition proceedings. It was the magistrate's legal conclusion from those facts with which Judge Reinhardt disagreed, and that legal conclusion was subject to plenary review on appeal.

Contrary to petitioner's suggestion (Pet. 9-10), Judge Reinhardt's review of the magistrate's findings is not at odds with the Seventh Circuit's decision in *Abu Eain* v. *Wilkes*, 641 F.2d 504, 508 (7th Cir.), cert. denied, 454 U.S. 894 (1981), the only court of appeals' decision that petitioner claims is in

conflict with the decision below. Like Judge Reinhardt, the court in *Abu Eain* concluded that the "existence of a violent political disturbance is an issue of past fact: either there was demonstrable, violent activity tied to political causes or there was not." 641 F.2d at 514. Both the *Abu Eain* court and Judge Reinhardt relied upon the magistrate's findings regarding the location and extent of political activity at the relevant times. Both then used those facts to arrive at a legal conclusion regarding whether the existence of such political activity in a particular location was sufficient to invoke the "political offense" doctrine. Thus, the method of approach in the two cases was the same.[6]

b. Petitioner also challenges (Pet. 13-15) Judge Reinhardt's analysis of the political offense exception, and he requests (*id.* at 15-16) that the Court take this occasion to conduct a general review of the political offense exception in the British treaty and others.

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[6] Petitioner suggests that the decision below is contrary to this Court's decision in *Ornelas* v. *Ruiz*, 161 U.S. 502 (1896). In fact, however, the two decisions are entirely consistent. In *Ornelas*, as in this case, the magistrate found that the political offense doctrine did not apply, because the offenses at issue were not of a political character. There, as here, the district court disagreed with the magistrate and granted the writ of habeas corpus. This Court reversed the district court, holding that the magistrate's findings were supported by evidence and thus had to be upheld. *Id.* at 511-512. The court of appeals in this case likewise upheld the magistrate's findings and his conclusion that the political offense doctrine did not apply to this case, even though the judges on the court of appeals reached that conclusion on differing legal grounds. In fact, a strict application of *Ornelas* would have required the court of appeals to affirm the magistrate's ruling that petitioner was extraditable on both charges, since there was evidence supporting the magistrate's ruling. *Ibid.*

As we have noted, the divergent approaches taken by the three members of the panel in this case do not commit the Ninth Circuit to any single view on the proper construction of the political offense exception. Moreover, the ratification of the new supplementary treaty renders the Ninth Circuit's struggles with the political offense doctrine largely academic, at least for purposes of future extradition requests by the United Kingdom. For that reason, any inconsistency between the judgment in this case and the results in the three other cases in which the United Kingdom has sought extradition of IRA members or associates is not likely to have any continuing effect.[7]

On the merits, we believe that the question whether a particular offense is "one of a political character" within the meaning of Article V of the 1977 extradition treaty is a matter that should be committed to the Secretary of State and should not be addressed by the courts in the course of extradition litigation. Courts of law are ill-equipped to address the sensitive and difficult questions of international politics

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[7] In any event, it is not clear that the application of the political offense exception has yielded the inconsistent results that petitioner claims (Pet. 16). Two of the three cases he cites, *In re Mackin*, No. 80 Cr. Misc. 1 (S.D.N.Y. Aug. 13, 1981), appeal dismissed, 668 F.2d 122, 124 (2d Cir. 1981), and *In re Doherty*, 599 F. Supp. 270, 272 (S.D.N.Y. 1984), involved the murder or attempted murder and wounding of British soldiers in Northern Ireland. Those cases therefore do not present the issue of the geographical limitation on the scope of the "political uprising" that is presented by Judge Reinhardt's analysis. The third case, *In re McMullen*, No. 3-78-1899 (N.D. Cal. May 11, 1979), involved the bombing of a military barr ks in England. Because that attack, unlike the attack in this case, was not directed at the general public or civilian police, the magistrate found that the offenses were "incidental to" the uprising in Northern Ireland.

that are raised by the political offense doctrine; absent a treaty provision requiring that the matter be left to the courts, we submit that the Secretary of State should resolve the political offense issue as part of his decision whether to file an application for extradition in the first place.

If the political offense exception is to be the subject of litigation, however, we believe that Judge Duniway's analysis was the best among the three approaches taken by the members of the panel in this case. Agreeing with the view taken by the Seventh Circuit in the *Abu Eain* case, Judge Duniway properly concluded that the political offense exception should be applied " 'with great care lest our country become a social jungle and an encouragement to terrorists everywhere' " (Pet. App. 150, quoting *Abu Eain*, 641 F.2d at 520). Other courts have followed the same cautious approach: there does not appear to be a single appellate court precedent—certainly petitioner cites none—in which extradition has been refused because of the political offense doctrine.[8] The paucity of authority for the application of the doctrine is hardly surprising. Our courts routinely give short shrift to claims of "political necessity" for criminal conduct in our own country (see *United States* v. *Allen*, 760 F.2d 447 (2d Cir. 1985); *United States* v. *Dorrell*, 758 F.2d 427 (9th Cir. 1985);

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[8] In 1957, the Ninth Circuit invoked the political offense doctrine in refusing to extradite an alleged war criminal to Yugoslavia. *Karadzole* v. *Artukovic*, 247 F.2d 198. This Court, however, vacated the judgment in that case, 355 U.S. 393 (1958), and as Judge Reinhardt observed in this case (Pet. App. 95), *Karadzole* is "one of the most roundly criticized cases in the history of American extradition jurisprudence."

United States v. *Perl*, 584 F.2d 1316, 1322-1323 (4th Cir. 1978), cert. denied, 439 U.S. 1130 (1979); *United States* v. *Moylan*, 417 F.2d 1002, 1008-1009 (4th Cir. 1969), cert. denied, 397 U.S. 910 (1970)); the courts are properly reluctant to recognize similar claims by persons who have committed crimes of violence in other countries.

Judge Duniway was also correct in concluding that the bombing conspiracy and murder charges were insufficiently related to the "political uprising" in Northern Ireland to fall within the political offense exception. For that reason, he concluded, petitioner failed to satisfy the requirement that the charged offenses be "incidental to" the uprising. The murder of Constable Tibble, in particular, had nothing whatsoever to do with the troubles in Northern Ireland, other than that petitioner may have been concerned that if he were stopped and questioned by the police on a London street, his terrorist activities might be discovered. Judge Duniway's analysis of that issue accords with that of the Seventh Circuit in *Abu Eain*, the only other court of appeals case to address the point. Like Judge Duniway, the *Abu Eain* court concluded that the political offense exception does not apply to "the indiscriminate bombing of the civilian population." *Abu Eain*, 641 F.2d at 520; see Pet. App. 150.

Even if Judge Duniway's position is incorrect, that would not aid petitioner in this case. Whatever lack of clarity there may be about the general scope of the political offense exception under the 1977 treaty between the United States and the United Kingdom, as well as under other similarly worded treaties, the exception clearly does not apply to someone in petitioner's position. Petitioner's case involves crimes of

violence committed (1) by a citizen of a country uninvolved in the political struggle; (2) against civilians unconnected with the struggle; and (3) in a location far from the scene of the alleged uprising. Each of the three judges on the panel in this case agreed that one or more of these points could be enough to remove the case from the "political offense" category, and to our knowledge no court has ever held the political offense exception applicable to such a case. For that reason, this would be an inappropriate candidate for review, even if there were a pressing need to have this Court address the contours of the political offense exception.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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